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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,353	02/05/2001	Patrick Steven Cunningham	3201P2284	5161

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SCOTTSDALE, AZ 85251

EXAMINER

KYLE, CHARLES R

ART UNIT PAPER NUMBER

3624

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/777,353

Applicant(s)

CUNNINGHAM, PATRICK
STEVEN

Examiner

Charles Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-14 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. They recite the phrase “allowing one of the builders to select...”. It is unclear whether a builder actually selects a lender; only “allowing” is required by the language of the Claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0077967 *Ingram* in view of 6,587,841 *DeFrancesco*.

As to Claim 8, *Ingram et al* disclose the invention substantially as claimed, including in a method for the application and payment of construction loans between lenders and builders, steps of:

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establishing a loan website (Fig. 7, para. 48) on a host server (Fig. 4, para. 48);
entering and submitting electronically information related to the construction project
to the desired lender (para. 49);

determination of approval of a construction loan by the desired lender (Fig. 3C, ele.
58; Fig. 11; para. 48, certification process);

following approval (certification of builder) of the construction loan submitting a
request for payment from a builder via the website (Fig. 12, ele. 46; para. 49, draw request);
and

transferring monetary funds after request for payment is submitted and approved (Fig.
12, ele. 178; para. 49).

Ingram does not specifically disclose selecting a desired lender from a list of lenders
to obtain credit approval of a builder from the desired lender. *DeFrancesco* discloses is
limitation at Fig. 3AC and Col. 30, line 48 to Col. 31, line 15. It would have been obvious to
one of ordinary skill in the art at the time of the invention to modify *Ingram* to utilize the
lender selection list of *DeFrancesco* because this would allow a builder to establish a
borrowing relationship with a preferred lender. The importance of such business
relationships among the parties of *Ingram* is specifically set out at Abstract, which recites:

*Such an embodiment establishes a more involved **relationship** between builder and
dealer, involving building supplies as well as funding.*

And at para. 46, which recites:

*Referring now to the drawings, FIG. 1 is a block diagram illustrating an exemplary
relationship of control and interaction among system entities. Such a loan administration system*

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*includes a borrower 24, a lender 26, an inspector 22, and a system administrator 20. A borrowing entity 24 desires the loan; an inspecting entity 22 enters a business **relationship** with the borrower 24 and oversees certain aspects of subsequent loan and draw processes; an administrative entity 20 oversees the borrower/inspector **relationship** and has control over system processes, including obtaining money and disbursing it to the borrower 24 or other third party; a lender 26 supplies monetary means for the loan, but is not directly involved with the borrower/inspector **relationship**.*

The *DeFrancesco* reference is cited to address the newly claimed and argued limitation of selection of a particular lender by a potential borrower. Applicant argues against the modification of *Ingram* because it has a system administrator, which Applicant characterizes as effectively impersonal and monolithic, and not amenable to establishment of relationships such as that between a lender and borrower. This is clearly shown to be false by the emphasis of *Ingram* of relationships among the borrowing, lending, dealing and inspecting entities. *Ingram* is not only amenable to modification to borrower selection of a lender, as per *DeFrancesco*, but suggest it.

As to **Claims 9 and 10**, *Ingram* discloses entering a user name and password to enter and submit electronically information related to a construction project to a lender at para. 48.

As to **Claim 11**, see the discussion of Claims 9 and 10 and *Ingram* further discloses accessing an application and submitting (updating) builder information to an electronic database at para 48 and Figs 8 and 11.

Regarding Claims 13 and 15, *Ingram* discloses electronic entry and submission of a draw amount and submission of an affidavit (inspection) to attest to accuracy at paras. 47, 49 and 50. Official Notice is taken that it was old and well known to itemize specific drawn items for financial accounting because this would allow a mapping of cost item to expenditure.

As to **Claim 14**, *Ingram* discloses status reports on the construction project at para. 49.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0077967 *Ingram* in view of 6,587,841 *DeFrancesco* and further in view of *Project Management*.

As to **Claim 12**, *Ingram* further discloses a contingency account at paras. 25 and 47. *Ingram* does not specifically disclose calculation of a budget/actual cost difference as either a surplus or deficit. *Project Management* discloses such a calculation at page 814, "Cost Variance" topic particularly. See also pages 813-830. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Ingram* to include the consideration of calculated surplus/overrun (deficit) because this would provide benefit to thrifty a sub-contractor, supplier or contract laborer as an increase to available funds based on relative savings and a penalty to an overspending sub-contractor, supplier or contract laborer as a decrease to available funds based on relative over spending relative to budget. These would enhance budgetary control. The Examiner makes these statements having worked professionally as an accountant for nine years.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0077967 *Ingram* in view of 6,587,841 *DeFrancesco* and further in view of *Pacifica South Bancrp Construction Lending*.

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As to Claim 16, *Ingram* discloses the invention substantially as claimed. See the discussion of claim 15. *Ingram* does not specifically disclose supply of contractor lien and affidavits form subcontractors. *Pacifica* discloses these concepts at pages 3 and 7, underlined text. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Ingram* to include such liens and affidavits to facilitate completion of financing processes for a construction project.

Response to Arguments

Applicant's arguments filed June 21, 2006 have been fully considered but they are not persuasive. See the citation to *DeFrancesco* and response to argument above..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (571) 272-6746. The examiner can normally be reached on 6:30 to 3:00.

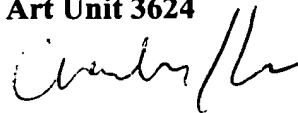
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

crk
September 12, 2006

Primary Examiner
Charles Kyle
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A handwritten signature in black ink, appearing to read "Charles Kyle", written over the printed name.